

REMARKS

Claims 1-19, 43-47 and 57-76 are currently pending in the subject application and are presently under consideration. Favorable reconsideration of the subject patent application is respectfully requested in view of the comments herein.

I. Rejection of Claims 1-19, 43-47 and 57-76 Under 35 U.S.C. §103(a)

Claims 1-19, 43-47 and 57-76 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pallakoff (US 6,269,343), in view of Thomas, *et al.*, “JIT: Strategies for Distant Suppliers” (hereinafter referred to as “Thomas”). It is respectfully requested that this rejection be withdrawn for at least the following reasons. The cited reference fails to teach or suggest each and every feature of the subject invention as claimed.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. ***Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.*** See MPEP §706.02(j). (Emphasis added). The teaching or suggestion to make the claimed combination and the reasonable expectation of success ***must both be found in the prior art*** and not based on applicant’s disclosure. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

The claimed subject matter relates to a system that facilitates volume pricing. More specifically, the system can aggregate orders for a product as well as aggregating shipping for the orders by, *e.g.*, determining a shipping cost when disparate buyers share a shipping method. In particular, independent claim 1 (and similarly independent claim 43) recites, “an offers and orders component that receives and aggregates orders for a product from a plurality of buyers; and ***a logistics component that determines a shipping price for the product*** for a subset of the plurality of buyers, ***the shipping price being determined based at least in part upon the subset of buyers sharing a shipping method.***” The references, alone or when combined, do not teach or suggest these novel features.

Rather, Pallakoff relates to electronic commerce and more particularly marketing products and services utilizing the Internet. Nowhere does Pallakoff disclose or suggest *a logistics component that determines a shipping price for the product ... the shipping price being determined based at least in part upon the subset of buyers sharing a shipping method* as set forth in the subject claims. Instead, Pallakoff discloses aggregating demand and providing demand based pricing. (See col. 1, ll. 53-55). Although Pallakoff discloses a shipping charge can be applied to a buyer's credit card (see col. 8, ll. 41-47), the reference is silent regarding an offers and orders component structurally interrelated with *a logistics component that determines a shipping price*. Moreover, a shipping charge in Pallakoff is materially distinct from a shipping price of the subject claims because Pallakoff does not teach or suggest the shipping charge is *determined based at least in part upon the subset of buyers sharing a shipping method*.

At page 4 of the Final Office Action (dated August 28, 2006), the Examiner concedes these deficiencies, but incorrectly contends that Thomas may remedy the deficiencies with respect to Pallakoff. Applicant's representative disagrees. In particular, Thomas does not teach or suggest sharing a *shipping method*. Rather, Thomas simply indicates that *shipping costs* can be shared. A shipping method is materially distinct from shipping costs. Hence, neither Thomas nor Pallakoff, either alone or when combined, disclose or suggest *a logistics component that determines a shipping price for the product ... the shipping price being determined based at least in part upon the subset of buyers sharing a shipping method* as set forth in the subject claims.

The Examiner maintains that the combination of Pallakoff and Thomas discloses all the claim features. However, the Examiner concedes that Pallakoff does not teach the aspects called out *supra*, and has relied upon Thomas to show subject matter that is distinct from what is claimed. It is readily apparent that Thomas does not teach or suggest *buyers sharing a shipping method*, but rather "sharing shipping costs with other manufacturers." Thus, the combination of Pallakoff and Thomas is insufficient to read upon the subject claims and the Examiner has provided no support for a contrary conclusion. Accordingly, the Examiner has failed to make a *prima facie* case for obviousness and this rejection should be withdrawn.

Moreover, the Examiner has made very broad and inaccurate generalization with respect to the subject claims and has, further, relied upon numerous "well-known in the art" statements in order to maintain this rejection. Applicant's representative duly traversed these well-known

statements, requesting the Examiner provide proper supporting references or withdraw the rejection pursuant to MPEP § 2144.3. Since this rejection was not withdrawn, applicant's representative repeats this request and also requests that the Examiner provide evidentiary support for construing the recited offers and orders component as "merely an interface screen" and the recited logistics component as simply "a calculator". In particular, since these generalizations are central to the grounds for rejection, the Examiner should provide a proper reference(s) illustrating the purportedly well-known interface screen and calculator that teach or suggest all the features of the subject claims. Neither Pallakoff nor Thomas do so. Accordingly, this rejection should be withdrawn.

CONCLUSION

The subject application is believed to be in condition for allowance in view of the above comments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [GEDP101USE].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,

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